

II. REMARKS

The Office Action dated October 12, 2007, has been received and carefully noted. The amendments made herein and the following remarks are submitted as a full and complete response thereto.

Claims 1-23 are pending. Claims 2 and 4-23 were withdrawn from consideration by the Examiner.

By this Amendment, claims 1-10, 12-14, 16-18, 21, and 23 are amended; claim 5 is canceled; and new claims 24-26 are added. Support for the amendments can be found in the specification and claims as originally filed. For example, support for the amendment to claim 1 can be found on pages 4-8, and page 10, line 12. Further, support for the amendment to claim 4 can be found in the specification, for example, on page 2-9. Claims 2-4, 6-14, 16-18, and 21 were amended to correct typographical errors and clarify the claims; and claim 23 was amended to conform to U.S. patent practice. Support for new claims 24-26 can be found in the specification on pages 8 and 12-13. Applicants submit that no new matter has been added and respectfully request reconsideration and withdrawal of the pending objections and rejections.

Objections

Claims 1, 3, and 4-10 were objected to. Claims 4-10 were withdrawn due to the asserted objections.

First, the Examiner objected to claims 1 and 4 because of the importation of limitations recited in the specification into the claims. In particular, the Examiner objected to the recitation of "listed in the specification," "as reported in the specification,"

“the ferulic radical of formula (XXXII),” and “formulas (I)-(XXXI)” in the claims. Applicants have amended the claims to incorporate the subject matter disclosed in the specification.

Second, the Examiner objected to claims 4 and 6-10, asserting that the claims were in improper form because of multiple dependencies. Claim 5 was objected to, because it depends from claim 4, and claims 4-10 were withdrawn because of this objection. However, Applicants respectfully disagree with the objection. Applicants note that claims 4 and 6-10 were amended to remove the multiple dependencies in the Preliminary Amendment filed on February 5, 2005. As such, Applicants respectfully request withdrawal of the objection of claims 4 and 6-10.

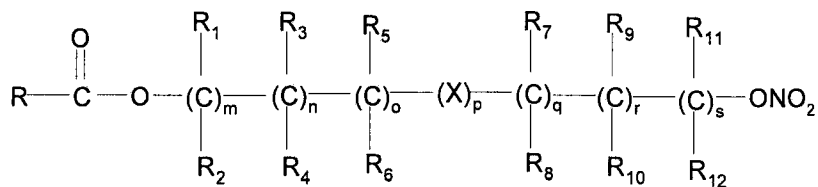
Finally, claims 3 and 4 were objected to because of the following formalities: (1) the recitation of “o” after “1” in the series “m, n, q, r, are...” in claim 3 and (2) the duplication of the word “the” in claim 4. The Examiner asserts that Applicants may have intended to recite “1 or 0” in line 3. Applicants assert that claim 3 recites that m, n, q, and r are 1; that o and s are 0 (zero); that p is 0 (zero) or 1; and that X is O or S. In order to expedite prosecution, Applicants have amended claim 3 to clarify this.

For at least the above reasons, Applicants respectfully request reconsideration and withdrawal of the objections to claims 1, 3, and 4-10.

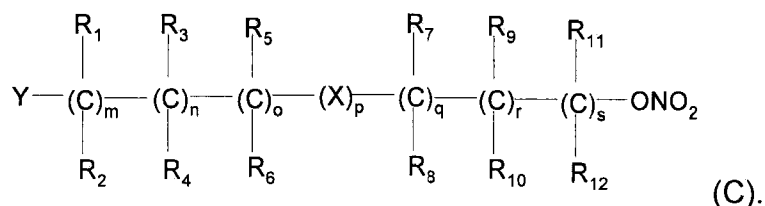
Rejection Under 35 U.S.C. §103

Claims 1 and 3 were rejected under 35 U.S.C. §103(a) as being unpatentable over Del Soldato (U.S. Patent No. 5,861,426). Applicants traverse the rejection.

Claim 1 of the presently claimed invention is directed to a "process for preparing a compound of general formula (A)



said process comprising reacting a compound of formula (B) [R-COOZ], with a compound of formula (C)," which is:



Applicants note that claim 1 has been presently amended to remove "Br, Cl, [and] I" as a possible definition of Y.

In contrast to the presently claimed Del Soldato discloses "the reaction of the sodium or potassium salts of the acids with the nitric esters of halogen alcohols of the general formula: NO₂-O-Y-Cl (Br, I)" (Del Soldato, col. 16, lines 3-8) (emphasis added). In particular, the Examiner notes the following reaction route in Del Soldato:



wherein, R-CO-ONa corresponds to Formula (B) and Br-Y-ONO₂ corresponds to Formula (C) of claim 1 of the presently claimed invention. Corresponding to Formula (C) of the presently claimed invention, Del Soldato discloses that Y is Br. Applicants note that in present claim 1, Y can be a number of definitions, but Cl, Br, and I are not possible definitions for Y.

Applicants submit that without the benefit of hindsight, one of ordinary skill in the

art would not be motivated to modify the process of Del Soldato, to arrive at the presently claimed invention.

Further, Applicants submit that without the benefit of hindsight, one of ordinary skill in the art would not know about the unexpected benefits of the presently claimed invention. For example, the specification notes the benefits of a process using the compound of formula (B) in which R is a ferulic acid radical of formula (XXXII):

“It has been surprisingly found that when in the compound of formula (B),] R is the radical of formula (XXXII) wherein R' is H (ferulic acid) the reaction is highly selective towards the formation of the ester of formula (A), in spite of the fact that the presence of two nucleophilic groups in the ferulic acid... could give a substantial formation of the nitroxyalkylether.”

(specification, page 12, lines 18-25). Further, for example, the comparative Examples show that reactions with 4-nitrooxybutyl 4-p-toluensulfonate show higher yields and higher purity of the final product than the reactions with 4nitrooxybutyl bromide.


For at least the above reasons, Applicants submit that Del Soldato does not teach or suggest the presently claimed invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1 and 3 under 35 U.S.C. § 103(a) over Del Soldato.

III. CONCLUSION

Applicants respectfully submit that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event this response is not timely filed, the Applicants hereby petition for an appropriate extension of time. The fee for this extension, along with any other additional fees which may be required with respect to this response, may be charged to Deposit Account No. 01-2300, referencing Attorney Docket No. 026220-00061.

Respectfully submitted,



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